

Floodplain and Drainage Advisory Committee

October 27, 2011 Meeting Notes

Committee Chair Frank Piorko began the presentation by welcoming all. Each Committee member as well as DNREC employees and its contractor introduced themselves. Committee members present were: Representative Quinton Johnson, Kyle Sonnenberg, Barry Benton, Paul Morrill, Sarah Keifer, Henry Chau, Ron Hunsicker, Fred Mott, Bruce Jones, David Baird, Gene Reed, David Carlson, Michael Harris, Jim Ford, Rich Collins, Vince D'Anna. Mike Powell, Greg Williams, Brooks Cahall, Bob Enright, Tony Pratt, and Marcia Cagle represented DNREC and David Athey and Gina Tonn represented DNREC's contractor Duffield Associates. Guest was George Haggerty.

Mr. Piorko summarized the September 20, 2011 meeting and specifically described again the Senate Bill 64 process. Mr. Collins said he thought the Secretary's Minimum Standards would be sent to the General Assembly before any other entities but Mr. Piorko replied that the Bill stated these would first be sent to local governments. Mr. Morrill believed that the presented flow chart show indicate the Secretary will "propose" minimum standards and not "issue" them. Mr. Piorko agreed.

Ms. Tonn presented general terms and concepts. She differentiated between floodplain management (coastal and areas adjacent to streams), stormwater management (the management of water quality and quantity), and drainage (conveyance). Definitions were presented to Committee members for inclusion in their binders and two exhibits were mounted on easels for future reference.

Mr. Powell presented for the remainder of the meeting and started with *Development in Areas without Sufficient Mapping and Flood Data*. He noted that Mr. Chau had two additional handouts which were distributed: 1) Federal Emergency Management Agency NFIP Insurance Report for Delaware and 2) Sample Flood Insurance Costs.

Mr. Chau asked Mr. Powell to describe instances where the 5 acres/ 50 lots rule was not met. Mr. Powell said it is usually one of two reasons: 1) a failure to enforce regulations or 2) a developer submitted data that was accepted locally but not subsequently sent to FEMA. Mr. Collins asked about the requirements to obtain a building permit and questioned how permits can be issued which violate FEMA floodplain lines. Mr. Powell replied that in some instances local officials fail to enforce regulations. Mr. D'Anna did not understand how plans get recorded in these instances. Mr. Chau clarified that the NFIP rules are applied at the building permit stage, not plan recordation.

Mr. Powell explained that older FEMA maps such as those based on 1960s USGS information and not very accurate. He said he believes one of the Committee recommendations should be disallowing site plans with information that differs from FEMA maps. He also noted that lots in floodplains are allowed by some jurisdictions in Delaware.

Mr. Morrill inquired about whether FEMA map revisions should be approved before revised boundaries are shown on site maps and about the time frame for FEMA reviews of detailed studies submitted by developers and was told it usually takes about three months. Mr. Chau clarified that the clock starts once all data has been received by FEMA.

Mr. Powell explained how per unit mapping costs borne collectively by individuals in the same watershed is usually much greater than mapping costs borne by developers or DNREC.

Mr. Powell stated that BFEs in privately-funded flood studies are often unclear and better data when obtained as part of the development process should be sent to FEMA. He also thought unofficial floodplain lines should be kept off of subdivision plans.

Mr. Sonnenberg asked why projects under the 5 / 50 rule were exempted from the regulations. Mr. Powell explained that mapping costs were much greater when the rule was first developed but said that today, mostly through automation, those costs have dropped significantly and perhaps the 5 / 50 threshold should be lowered.

Mr. Mott asked what happens when a home owner obtains a mortgage and later is told he or she is in a mapped floodplain. Mr. Powell described the process of “forced placed flood insurance” and noted it is usually more expensive than if insurance had been obtained at the onset. Mr. Piorko asked if banks are notified when revised maps are issued. Mr. Powell said they are supposed to be but this doesn’t always occur or if it does, not in a timely manner. Mr. Powell also noted that more often than not this occurs when a bank re-checks their zone designation and finds an error. People just weren’t aware of their correct flood zone.

Mr. Collins asked if DNREC wants FEMA lines adhered to and Mr. Powell responded in the affirmative but furthered that the using unofficial lines on site plans is confusing. Mr. Collins asked if Mr. Powell was assuming that studies would be done to get the official maps changed. Mr. Powell said yes but also clarified that the requirement to perform a flood study would only apply in areas without BFEs shown on the FEMA map.

Mr. Cahall asked questions about the process when there is a detailed FEMA study for a site but the developer has better topographic data. Mr. Powell explained that older maps often have inaccurate topography and developers are encouraged to submit better topography to FEMA.

Mr. Collins asked what the goal is and noted that there is a window of opportunity given the current lack of new subdivisions. He said DNREC should request funds from FEMA to perform mapping where needed and asked what local officials are doing if they are not doing their jobs. Mr. Powell explained that assessments of existing codes is part of the Senate Bill 64 process. Mr. Piorko thought local governments would react in one of three ways: 1) agree changes are a good idea and implement them, 2) agree changes are a good

idea but state they do not have the resources to implement them, or 3) disagree changes are a good idea. He also noted regulatory changes moving forward are one thing but there are thousands of undeveloped but recorded lots in Delaware which is another.

Mr. D'Anna asked how people get mortgages for parcels in floodplains. Mr. Powell answered that he doesn't know why it takes so long for banks to verify floodplain status. Mr. D'Anna noted that there are lots of maps that are already platted and not developed and that there will be issues with those lots. He thought that the State should start mapping aggressively. Mr. Powell explained that banks were using paper maps in 1995 and now are using GIS technology to identify flood zones at properties.

Mr. Morrill noted that the FEMA time line for review adds months to an already lengthy plan review time period and asked how reviews are handled. Mr. Powell explained that the process is not quick and is typically multi-month. FEMA hires contractors and reviews are done on a regional basis. Reviews for Delaware are contracted by FEMA to a team in Maryland

Mr. Baird asked if site plans should show the current maps or those proposed for revisions. Mr. Powell answered the current maps. Mr. Baird questioned the use of current maps even though flawed and Mr. Powell reiterated that current maps are the ones everyone should use because those are the only official maps.

Mayor Ford inquired about FEMA schedules and was told by Mr. Powell that 90 day reviews are typical. Mayor Ford followed with asking whether developers are required to submit to FEMA. Mr. Powell said that that is a best practice being recommended but explained that few municipalities require submittals to FEMA.

Mr. Collins asked who was in charge of mapping. Mr. Powell answered that some responsibilities need to fall on private entities since neither FEMA nor states can always have accurate up-to-date maps readily available when development is proposed. Mr. Collins replied that that shifts costs to people who have no control over the process. Mr. Powell said that DNREC is performing mapping on an on-going basis. He described some of the statewide studies that are being done with FEMA funding and reiterated that it is not possible given changes in watersheds for DNREC to always have an accurate map. Mr. Piorko said the Department prioritizes mapping and currently has \$700,000 to do additional studies.

Mr. Powell continued with *Inadequate Building Standards*. Mr. Chau noted that for freeboard, insurance policies dictate rounding up so 18 inches of freeboard becomes two feet. Mr. Powell said New Castle County uses 18 inches and believes that is a good balance between not being too onerous but still providing insurance reductions.

Mr. Sonnenberg asked why construction should be allowed in floodplains at all, particularly considering the probability of global warming. Mr. Powell explained the difference between coastal and riverine flooding and said that due to the breadth of coastal floodplains, disallowing construction would not be practical. Mr. Pratt further

explained that when the NFIP was first established, it was based on home rule and that communities would be responsible for zoning.

Mr. Piorko said that there are tens of thousands of recorded lots in mapped floodplains and that there is a need to minimize risk for those lots and for unrecorded lots as well.

Mr. Collins used Long Neck Road in Sussex County as an example and said stringent regulations would have resulted in much less construction than exists today. He stressed that these were affordable places near the beach / water for average people. Mr. Piorko stated that adequate building standards can minimize risk without negating construction. Mr. Collins said that the government cannot dictate everything and citizens should be allowed to make decisions themselves. Mr. Piorko rhetorically asked what an acceptable level of risk is for the State and local governments. Mr. Collins opined that people know risks and, for example, they consider mobile homes disposable. Mr. Piorko said that DNREC gets hundreds of phone calls after storms and are asked why they allow people to be put at risk. Mr. Benton said that DelDOT paid nearly \$20 million a few years ago buying out homes of people who chose to built at risk.

Mr. Chau noted the discussion is really about front-end versus back-end costs. He noted that on the back-end, government at multiple levels is asked to come in and help after floods. Mr. Collins believed the only costs being discussed were those borne by governments but the benefits of economic activity were not being included. He said that there is no requirement for the government to help. Mr. Piorko noted that this group is not intending to shut down development in Sussex County. Mr. Morrill did not believe the discussions were prescribing that development could or could not occur but were focused more on acceptance of responsibility. He suggested a focus on getting information and disclosures out to property owners. Mr. Powell observed that in 1995 FEMA increased the flood elevations on their maps around Long Neck Road by two feet. Communities argued that they would have difficult surviving. He saw that building continued but floors were elevated two feet higher than before the map change.

Mr. Powell continued with *Inconsistent and/or Minimum Code Provisions*. Mr. Morrill said that he believes there was a law three to four years ago regarding the height of homes in mobile home parks. Mr. Chau reiterated that Maryland had reduced the 5 / 50 rule to a 5 / 5 rule.

Mr. Baird asked about additional analyses being done after a property is removed from the floodplain due to fill. Mr. Powell answered that FEMA does not typically analyze the impact of the fill associated with map revisions due to fill.

Mr. Piorko said that existing code language may result in unintended consequences and inquired about the level of effort to collate and review local codes. Mr. Powell said it would be a difficult task as many regulations were adopted years ago and with multiple amendments were not always clear. Mr. Piorko said two approaches could be used: 1) provide model ordinances or 2) provide resources to review local codes.

Mr. D'Anna said there are some things that should be passed statewide. Most reasonable people would agree that standards for freeboard and filling in the flood fringe should be in any code.

Mr. Pratt noted adjustments to code have the benefit of CRS credits. Mr. Powell replied in the affirmative.

Mr. Chau said if higher standards were adopted, other regulations should also be made clearer. Mr. Powell agreed and said poor or contradictory regulations should be clarified in addition to higher standards being developed.

Referring back to Mr. Piorko's two approaches, Mayor Ford said he liked the second and likened it to the recent State efforts regarding recycling. He supports DNREC coming to communities to review their standards. He also thought it would be appropriate to have one or two standards to apply Statewide, but otherwise would like flexibility.

Mr. Pratt said there was already a vehicle in place at DNREC to assure communities' compliance with the NFIP. Mr. Powell and Mr. Williams visit communities for that purpose.

Mr. Morrill said that compliance with CRS was expensive for smaller towns. He thought it would be appropriate to develop a model that could be adopted and then a jurisdiction could get CRS credits.

Mr. Pratt asked if the League of Local Governments could assist in the process. Mayor Ford thought that was possible.

Referring to the NFIP Insurance Report distributed by Mr. Chau, Mr. Collins noted that other than coastal towns, in Sussex County the number of claims versus premiums meant FEMA was greatly profiting. Mr. Williams noted that claims and premiums are much more balanced Statewide once Kent and New Castle Counties were included. Mr. Collins said he did not think it appropriate for the Committee to spend two years addressing a problem that does not exist. He requested more basic information before being asked to make any decisions.

Mr. Harris noted that the amount of money being spent to address flooding problems is actually greater than previously discussed and should include other sources such as the 21st Century Fund. Mr. Piorko agreed that millions of dollars are spent addressing flooding issues and that there is spending at the local, state, and Federal levels.

Mr. Chau said the figures in the exhibit he distributed earlier in the column "Total Paid" are not in today's dollars whereas the premiums are. Mr. Collins reiterated that the FEMA profit is staggering if the coastal towns were not included. Mr. Chau replied that not everyone wins in insurance and that some states perhaps subsidize other states. Mr. Sonnenberg asked if the national program was in sound financial condition and Mr. Chau

replied that it was before Katrina. Mr. Powell said one reason was FEMA's ability to borrow money.

Mr. Pratt said FEMA makes a profit in coastal areas to offset damages paid in inland riverine areas. He also said the Corps of Engineers has spent about \$80 million on beach nourishment projects in coastal Delaware and the storm damage reductions justified the expenditures.

Mr. Haggerty said \$70 million was spent to buy out the homes in Glenville. Regarding building in flood plains, he said prohibitions would be detrimental economically but some mitigation measures were appropriate. He also said the way to minimize government expenditures would be to get everyone to sign a release saying they were responsible which will not happen. He said people always come back to the government for help. He concluded by stating the first reason everyone was present at the meeting should be public safety.

Mr. Piorko closed the meeting by saying the next meeting would conclude the floodplain issues and begin discussions about stormwater management and drainage. The meeting adjourned approximately 11:40.